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OM PRAKASH MAURYA

v.

B U.P. COOPERATIVE SUGAR FACTORIES FEDERATION,
LUCKNOW & ORS.

MAY 9, 1986

[O. CHINNAPPA REDDY AND K.N. SINGH, JJ.]

C *U.P. Cooperative Societies Act, 1975, Sections 121 and 122, scope of the scheme under—if two sets of service Rules are prevalent, which would prevail—Whether the U.P. Cooperative Sugar Factories Federation Service Rules, 1976 override the U.P. Cooperative Societies' Employees Service Regulations 1975.*

D *Deemed Confirmation—Whether an employee who has completed the statutory maximum period of probation could be deemed to have been confirmed—U.P. Cooperative Societies Employees Service Regulations 1975, Regulations 17 and 18—Whether reversion to substantive post in such a case, valid.*

E **In the State of Uttar Pradesh there are two sets of service rules (i) The U.P. Cooperative Societies Employees Service Regulations 1975 framed by the U.P. Cooperative Institutional Authority constituted by the State Government through a Notification dated March 4, 1978 as an authority for the recruitment, training and disciplinary control of the employees of the Apex Level Societies Central or Primary Societies and; (2) the U.P. Cooperative Sugar Factories Federation Employees' Service Rules 1976 framed by the cane commissioner by virtue of the power vested under section 122(1) of the U.P. Cooperative Societies Act which provided that they shall apply to all the employees of the U.P. Cooperative Sugar Factories Federation Ltd. While the proviso to Regulation 17 restricts the power of the appointing authority in extending the period of probation beyond the period of one year and in case of an employee appointed against a regular vacancy beyond two years, Rule 5 of the Federation Service Rules 1976 does not place any such restriction on the appointing authority's power to extend the period of probation and in the absence of a confirmation order, the employee shall continue to be a probation for indefinite period. Again while the Regulations framed by the Institutional Service Board require approval of the State**

Government under sub-section 2 of section 122 of the Act, the Rules do not provide for an approval. Section 2(a-4) which defines "Apex Level Societies" specifies the U.P. Cooperative Sugar Factories Federation Ltd. as an Apex Level Society.

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The appellant joined service in Kisan Sahkari Chini Mills Ltd. Bisalpur District Pilibhit, a Sugar Factory run and managed by the U.P. Cooperative Mills Federation. While working as an Office Superintendent, he was selected for promotion to the post of commercial officer and by an order dated 29.8.80 appointed on probation for a period of one year which was extended by another order dated 2.10.81 till 4.9.82. No further order either extending the period of probationary period or confirming him on the post was issued and while so continuing he was reverted, by an order dated 2.9.83, to the post of office Superintendent. The appellant challenged the validity of the reversion order before the High Court of U.P. (Lucknow Bench) on the sole ground that on the expiry of the probationary period he stood confirmed and he could not be reverted treating him on probation. The High Court held that on the expiry of the probationary period, the appellant could not be deemed to be confirmed as there was no rule prohibiting the extension of the probationary period. Hence the appeal by special leave.

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Allowing the appeal, the Court

HELD: 1.1 Since the appellant's services were regulated by the U.P. Cooperative Societies Employees Service Regulations, 1975 under which his services could not be extended beyond the maximum period of two years, he stood confirmed by implication on the expiry of maximum probationary period and thereafter, he could not be reverted to a lower post treating him on probation. The order of reversion is illegal. [87D-E]

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1.2 Reading Regulations 17 and 18 together it is clear that an employee appointed against a regular vacancy cannot be placed on probation for a period more than two years and if during the period of probation the appointing authority is of the opinion that the employee has not made use of opportunity afforded to him he may discharge him from service or revert him to his substantive post but he has no power to extend the period of probation beyond the period of two years. Regulation 18 stipulates confirmation of an employee by an express order on the completion of the probationary period. The regulations do not expressly lay down as to what would be the status of an employee on the

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A expiry of maximum period of probation where no order of confirmation is issued and the employee is allowed to continue in service. Since Regulation 17 does not permit continuation of an employee on probation for a period more than two years the necessary result would follow that after the expiry of two years probationary period, the employee stands confirmed by implication. This is implicit in the scheme of Regulation 17 and 18. [82D-H]

State of Punjab v. Dharam Singh [1968] 3 SCR 1 applied.

1.3 It is well settled that where appointment on promotion is made on probation for a specific period and the employee is allowed to continue in the post after expiry of the probationary period without any specific order of confirmation he would be deemed to continue on probation provided the Rules do not provide contrary to it. In that sense, if Rule 5 of the U.P. Cooperative Federation Service Rules, 1976 were to apply, the appellant, no doubt could not acquire the status of a confirmed employee in the post of commercial officer. But the scheme

C of sections 121 and 122 of the U.P. Cooperative Societies Act, 1965 postulates that primacy has to be given to Regulations framed by the Authority under section 122 of the Act and if there are two sets of rules regulating the conditions of service of employees of Cooperative Societies the Regulations framed under section 122 and approved by the State Government shall prevail. In this view, the provisions of the U.P. Cooperative Sugar Factories Federation Service Rules do not override Service Regulations 1975 which is further evidenced by Government's Notification dated 6.8.1977. Since the Institutional Service was conferred power to frame regulations regulating the conditions of service of the employees of Apex Level Societies, the regulations framed by the Board alone will apply to the employees of the U.P. Cooperative Sugar Factories Federation Ltd. so long as such a power has not been withdrawn. Further, constituting the commissioner and Secretary of the Cane Development Department as the competent authority for framing regulations for the recruitment, training and disciplinary control of the employees of the U.P. Cooperative Sugar Factories Federation Ltd. is of no consequence to the applicability of 1975 Regulations. [84D-E; 86D-E; 85F; 86G]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 491 of 1985

H From the Judgment and Order dated 26th July, 1984 of the Allahabad High Court in W.P. No. 4899 of 1983.

Pankaj Kalra for the Appellant.

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Rameshwar Dial and Sarv Mitter for the Respondents.

The Judgment of the Court was delivered by

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SINGH, J: This appeal is directed against the order of the High Court of Allahabad (Lucknow Bench) dismissing the appellant's writ petition made under Art. 226 of the Constitution challenging the Order dt. 2.9.1983 reverting the appellant from the post of Commercial Officer to that of Superintendent.

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The appellant joined service in Kisan Sahkari Chini Mills Ltd., Bisalpur District Pilibhit, a sugar factory run and managed by the Uttar Pradesh Co-operative Mills Federation. While the appellant was working as Office Superintendent, he was selected for promotion to the post of Commercial Officer and by Order dt. August 29, 1980 appointed on probation for one year against a regular vacancy with a condition that his probationary period may be extended further and during the period of probation he could be reverted to the post of Office Superintendent without any notice. On 2.7.1981 the appellant was transferred from Bisalpur to Majohla Sugar Factory where he continued to work as Commercial Officer. By an Order dt. 2.10.1981 the appellant's probationary period was extended for one year till 4.9.1982, the period so extended expired on 4.9.82 but no further order either extending the probationary period or confirming him on the post was issued, and the appellant continued to work as Commercial Officer. The Managing Director of the U.P. Co-operative Sugar Mill Federation Ltd. a "Co-operative society" registered under the U.P. Co-operative Societies Act, 1965, which runs and manages a number of sugar factories in the State of Uttar Pradesh issued order on 2.9.83 reverting the appellant to the post of Office Superintendent. The appellant challenged the validity of the reversion order before the High Court on the sole ground that on the expiry of the probationary period he stood confirmed, and he could not be reverted treating him on probation. The High Court held that on the expiry of the probationary period the appellant could not be deemed to be confirmed as there was no rule prohibiting the extension of probationary period.

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The U.P. Co-operative Institutional Service Board constituted by the State of Uttar Pradesh in accordance with sub-sec. (2) of sec. 122 of the U.P. Co-operative Societies Act, 1965 has framed the U.P.

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A Co-operative Societies Employees Service Regulations 1975 which regulate the condition of service of employees of all the co-operative societies placed under the purview of the Institutional Service Board by the Government Notification No. 366-C/XIIC-3-36-71 dt. March 4, 1972. These regulations contain provisions for recruitment, probation, confirmation, seniority and disciplinary control. Regulation 17 provides for probation, it lays down that all persons on appointment against regular vacancies shall be placed on probation for a period of one year. Proviso to the Regulation lays down that the appointing authority may, in individual cases, extend the period of probation in writing for further period not exceeding one year, as it may deem fit. Clause (ii) of the Regulation provides that if, at any time, during or at the end of the period of probation or the extended period of probation, it appears to the appointing authority that the employee placed on probation, has not made sufficient use of the opportunity offered to him or has otherwise failed to give satisfaction, he may be discharged from service, or reverted to the post held by him substantively, if any, immediately before such appointment. Regulation 18 provides for confirmation of an employee on the satisfactory completion of the probationary period. Regulation 17 and 18 read together, provide that appointment against a regular vacancy is to be made on probation for a period of one year, this probationary period can be extended for a period of one year more. The proviso to Regulation 17 restricts the power of the appointing authority in extending period of probation beyond the period of one year. An employee appointed against a regular vacancy cannot be placed on probation for a period more than two years and if during the period of probation the appointing authority is of the opinion that the employee has not made use of opportunity afforded to him he may discharge him from service or revert him to his substantive post but he has no power to extend the period of probation beyond the period of two years. Regulation 18 stipulates confirmation of an employee by an express order on the completion of the probationary period. The regulations do not expressly lay down as to what would be the status of an employee on the expiry of maximum period of probation where no order of confirmation is issued and the employee is allowed to continue in service. Since Regulation 17 does not permit continuation of an employee on probation for a period more than two years the necessary result would follow that after the expiry of two years probationary period, the employee stands confirmed by implication. This is implicit in the scheme of Regulation 17 and 18. In *State of Punjab v. Dharan Singh* [1968] 3 SCR 1, a Constitution Bench of this Court held,

“Where, as in the present case, the service rules fix a certain period of time beyond which the probationary period cannot be extended, and an employee appointed or promoted to a post on probation is allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation, he cannot be deemed to continue in that post as a probationer by implication. The reason is that such an implication is negated by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it. In such a case, it is permissible to draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication.”

In the instant case the order of appointment promoting the appellant on the post of Commercial Officer merely indicated that his probationary period could be extended and he could be reverted to the post of Office Superintendent without any notice. Stipulation for extension of probationary period in the appointment order must be considered in accordance with the proviso to Regulation 17(1) which means that the probationary period could be extended for a period of one year more. Undisputedly on the expiry of the appellant’s initial probationary period of one year, the appointing authority extended the same for another period of one year which also expired on 4.9.82. During the period of probation appellant’s services were neither terminated nor was he reverted to his substantive post instead he was allowed to continue on the post of Commercial Officer. On the expiry of the maximum probationary period of two years, the appellant could not be deemed to continue on probation, instead he stood confirmed in the post by implication. The appellant acquired the status of a confirmed employee on the post of Commercial Officer and the appointing authority could not legally revert him to the lower post of Superintendent.

Learned Counsel appearing for the U.P. Co-operative Sugar Factories Federation urged that the U.P. Co-operative Societies Employees Service Regulations 1975 do not apply to the appellant as he was an employee of the U.P. Co-operative Sugar Factories Federation, as the condition of service of the appellant and other employees of the U.P. Co-operative Sugar Factories Federation are regulated by the U.P. Co-operative Sugar Factories Federation Service Rules 1976

A framed by Cane Commissioner in exercise of his powers under sub-sec. (1) of sec. 121 of the Act published in the U.P. Gazette dt. September 4, 1976. Rule 3 of the U.P. Co-operative Sugar Factories Federation Service Rules 1976 (herein after referred to as the Federation Service Rules) provides that these Rules shall apply to all the employees of the Federation. Rule 5 provides that every employee shall be appointed on probation for such period as the appointing authority may specify and the period of probation may be extended by the appointing authority from time to time, the rule does not prescribe any limit on the extension of the probationary period. Rule 6 provides that upon satisfactory completion of probationary period an employee shall be eligible for confirmation. Placing reliance on rule 5 learned counsel for the respondents urged that since there was no order of confirmation the appellant's probationary period stood extended, therefore, he could be reverted at any time to his substantive post. It is true that rule 5 of the Federation Service Rules does not place any restriction on the appointing authority's power to extend the probationary period, it may extend the probationary period for an unlimited period and in the absence of Confirmation Order the employee shall continue to be on probation for indefinite period. It is well settled that where appointment on promotion is made on probation for a specific period and the employee is allowed to continue in the post after expiry of the probationary period without any specific order of confirmation he would be deemed to continue on probation provided the Rules do not provide contrary to it. If Rule 5 applies to the appellant he could not acquire the status of a confirmed employee in the post of Commercial Officer and he could legally be reverted to his substantive post.

F There are two set of rules (i) The U.P. Co-operative Societies Employees Service Regulations, 1975, (ii) the U.P. Co-operative Sugar Factories Federation Employees Service Rules, 1976. The question is which of the rules apply to the employees of the Co-operative Sugar Factories Federation. While considering this question it is necessary to advert to the relevant provisions of the Act and the Rules framed thereunder and the Notifications issued from time to time.

G Section 121 of the Act confers power on the Registrar, (an officer appointed as such by the State Government under sec. 3) to frame regulations to regulate the emoluments and conditions of service of employees in a Co-operative Society or class of Co-operative Societies. Section 3(2) confers power on the State Government to appoint officers to assist the Registrar and to confer on them all or any of the powers of the Registrar. An officer on whom powers of Re-

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gistrar are conferred by the State Government, has authority to frame rules regulating conditions of service under sec. 121(1) of the Act. Section 122(1) confers power on the State Government to constitute an authority for the recruitment, training and disciplinary control of the employees of the Co-operative societies or class of co-operative societies and it may further require such authority to frame regulations regarding recruitment, emoluments, terms and conditions of service including disciplinary control of such employees. Regulations so framed require approval of the State Government under sub-sec. (2). Once approval is granted, the regulations take effect from the date of publication. The State Government in exercise of its powers under sec. 122(1) issued a Notification No. 366-C/XIIC—3-36-71 dt. March 4, 1972 constituting the U.P. Co-operative Institutional Service Board as an authority for the recruitment, training and disciplinary control of the employees of the Apex Level Societies Central or Primary Societies, and it further conferred power on the Institutional Service Board to frame regulations regarding recruitment, emoluments, terms and conditions of service of the employees of the co-operative societies of the Apex Level Societies Central or Primary Societies. In pursuance thereof the Institutional Service Board framed the U.P. Co-operative Societies Employees Service Regulations 1975 regulating the conditions of service of the employee of these Co-operative Societies which were placed under the purview of the Institutional Board by the Government Notification No. 366-C/XII-C-3-36-71 dt. March 4, 1972. This Notification states that the Board shall have authority to frame regulations for the recruitment, training and disciplinary control of the employees of the Apex Level Societies, Central, or Primary Societies. Section 2(a-4) which defines "Apex Level Societies", expressly specifies the U.P. Co-operative Sugar Factories Federation Ltd. as an Apex Level Society. Since the Institutional Service Board was conferred power to frame regulations regulating the conditions of service of the employees of Apex Level Societies, the regulations framed by the Board apply to the employees of the U.P. Co-operative Sugar Factories Federation Ltd. The respondents have failed to place any Notification before the Court to show that the power of the Institutional Service Board to frame regulations, regulating the conditions of service of the employees of Apex Level Societies including that of U.P. Co-operative Sugar Factories Federation Ltd. was ever withdrawn.

The U.P. Co-operative Sugar Factories Federation Service Rules 1976 have been framed by the Cane Commissioner under sub-sec. (1)

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- A of sec. 122 of the Act. These Rules provide that they shall apply to all the employees of the U.P. Co-operative Sugar Factories Federation Ltd., but the question is whether rules so framed by the Cane Commissioner would override the Service Regulations 1975. As noted earlier, the Institutional Service Board was constituted an authority under sec. 122(1) of the Act and authorised to frame regulations regulating the conditions of service of employees of the Co-operative Societies including those of Apex Level Societies. Sub-section (2) of sec. 122 provides that on approval of the Regulations by the State Government any rule or regulations framed by the Registrar in exercise of its powers under sec. 121(1) would stand superseded. Sub-section (1) of sec. 121 confers power on the Registrar which may include any other subordinate officer or authority to frame rules regulating the condition of service of employees of Co-operative Societies, such rules do not require approval of the State Government. While a regulation framed by an authority constituted under sub-sec. (1) of sec. 122 requires approval of the State Government and on such approval the regulation so framed supersedes any rules made under sec. 121. The scheme of sec. 121 and sec. 122 postulates that primacy has to be given to regulations framed by the authority under sec. 122 of the Act. If there are two sets of rules regulating the conditions of service of employees of Co-operative societies the regulations framed under sec. 122 and approved by the State Government shall prevail. In this view the provisions of the U.P. Co-operative Sugar Factories Federation Service Rules 1976 do not override Service Regulations of 1975. It appears that this position was realised by the State Government and for that reason it issued Notification No. U.O. 402(II)/C-I-76 dt. August 6, 1977 constituting the Commissioner and Secretary Sugar Industry and Cane Development Department as authority under sub-sec. (1) of sec. 122 for the recruitment, training and disciplinary control of employees of the U.P. Co-operative Factories Federation Ltd.

The learned counsel for the respondent urged that since the Government had constituted the Commissioner and Secretary of the Development Department as the competent authority for framing regulations for the recruitment, training and disciplinary control of the employees of the U.P. Co-operative Sugar Factories Federation Ltd. 1975 Regulations framed by the Institutional Service Board do not apply. We find no merit in this submission. Firstly, the Notification dt. August 6, 1977 merely designates the Commissioner and Secretary Sugar Industry and Cane Development Department as the authority for the recruitment, training and disciplinary control of the employees of the

U.P. Co-operative Sugar Factories Federation, it does not confer power on the authority to frame any rule or regulations regulating the conditions of service of the employees of Sugar Factories Federation Ltd. But even if any such power can be inferred, admittedly no rules or regulations regulating the conditions of service of the employees of the Co-operative Sugar Factories Federation have as yet been framed. Learned counsel for the respondents conceded that draft service regulations have been prepared but those have not been approved by the Government as required by sub-sec. (2) of the Act. In absence of approval of the State Government as required by sub-sec. (2) of sec. 122, regulations, if any, framed by the Commissioner and Secretary Sugar Industry and Cane Development Department do not acquire any legal force. In this view 1975 Regulations framed by the Institutional Service Board continue to apply to the employees of the U.P. Co-operative Sugar Factories Federation Ltd.

In view of the above discussion it is manifestly clear that the appellant's services were regulated by the U.P. Co-operative Societies Employees Service Regulations, 1975. Since under those Regulations appellant's probationary period could not be extended beyond the maximum period of two years, he stood confirmed on the expiry of maximum probationary period and thereafter he could not be reverted to a lower post treating him on probation. The Order of reversion is illegal. We accordingly allow the Appeal, set aside the order of the High Court and quash the order of reversion dt. 2.9.1983 and direct that the appellant shall be treated in service and paid his wages and other allowances. The appellant is entitled to his costs which is quantified as Rs. 1,000.

S.R.

Appeal allowed.